

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

HOWARD KOENIG

Plaintiff,

v.

AUTOMATIC DATA PROCESSING

Defendant

:
:
:
:
:
:
:
:
:
:

Civil Action No. 99-5816(KSH)

: ORDER ON INFORMAL APPLICATION

This matter having come before the Court by way of letter dated February 6, 2006, in which the defendants seek leave to file a motion for summary judgment in advance of their conference with the Hon. Katharine S. Hayden on March 14, 2006; and the Court being advised that this case has recently been remanded from the Court of Appeals for the Third Circuit and that a mandate was issued [Docket Nos. 126 & 127]; and it appearing that the purpose of the conference is to discuss the proceedings that may occur pursuant to the mandate; and it therefore appearing that any motion practice is premature and will not necessarily advance the goal of Fed. R. Civ. P. 1, because the mandate as implemented by Judge Hayden may require steps different from a motion for summary judgment¹; and as the Court has the benefit of its own prior opinions and the Opinion of the Court of Appeals for the Third Circuit, this is not a situation that the trial judge needs a formal brief at this time to discuss implementing the mandate; and for all of these reasons

IT IS ON THIS 9th day of February, 2006

¹When a district judge receives a mandate, they sometime solicit information from counsel regarding how to implement the mandate, including but not limited to, a recitation of counsel's views regarding the impact of the mandate. Thus, motion practice does not automatically follow the issuance of the mandate.

ORDERED that the request for leave to file a motion for summary judgment at this time is denied without prejudice; and

IT IS FURTHER ORDERED that the parties shall discuss the implementation of the mandate and related proceedings during the conference with Judge Hayden on March 14, 2006.

s/Patty Shwartz
UNITED STATES MAGISTRATE JUDGE